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Labour relations within the BRICS: common core and prospects of supranational regulations

Relaciones laborales dentro de los BRICS: núcleo común y perspectivas de regulaciones supranacionales

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ABSTRACT

The impact of globalization leads to increasing flows of cross-border labor mobility. The goal of the current study is the development of the world economy. The methodology used consist of reviewing and analyzing legal approaches of BRICS countries in the field under study. The obtained results indicated that the approach of the applicability or non-application of the rules of international law within the BRICS actually affects the scope of international private law.

Keywords: BRICS Countries, Globalization, International Law, World Economy.

RESUMEN

Es obvio que el impacto de la globalización conduce a flujos crecientes de movilidad laboral transfronteriza. El objetivo del presente estudio es el desarrollo de la economía mundial. Las metodologías que se han utilizado consisten en revisar y analizar los enfoques legales de los países BRICS en el campo en estudio. Los resultados obtenidos indicaron que el enfoque de los estados nacionales para la aplicación o no aplicación de las normas de derecho internacional dentro de los BRICS en realidad afecta el alcance del derecho privado internacional.

Palabras clave: Derecho internacional, Economía mundial, Globalización, Países BRICS.

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INTRODUCTION

Differences in legal orders of BRICS countries, belonging to “civil law” and “common law” countries, predetermines the necessity of studying their law for the most successful development of partnership relations of Russia with other BRICS countries on the conditions of equal opportunities (Vijayakumar et al.: 2010, pp. 1-13; Bornmann et al.: 2015, pp. 1507-1513). Several areas of regulation have been selected for the study; in particular, approaches to the application of national rules, which are in force in the sphere of labour relatives within the BRICS countries. in the light of their compliance with the standards set forth in International Labour Organization (further on – ILO) instruments and problems of application of such rules, and the scope of application of international private law (further on – IPL) provisions (Danthine & Donaldson: 2002; Turner et al.: 2017; Van & Molenaar: 2012).

1.METHODS

The author in this paper proceeds from the objectively subjective assignment of any phenomena and processes of the external world and applied general scientific and unique research methods, such as formal and dialectical logic combined with induction and deduction, hypothesis and analogy, analysis and synthesis, systemic analysis. Thus, the process of systematic analysis, along with such operations as induction and deduction, is used in the course of consideration of the provisions of BRICS countries legislation in the field under study, to clarify its key provisions and the relationship with other regulations. Methods of formal and dialectical logic help to understand the relationship between science and technology and innovation. The materialistic view of the processes and phenomena of the external world as a whole makes the study proceed from the fact that the transformation of approaches to ILO compliance changes the ILO provisions subject area (Thirkell et al.: 2011; Baladacchino: 2013; Rodríguez-Soria et al.: 2014).

2. RESULTS

The role of international treaties in the sphere of material labor law (ILO international conventions, etc.), which unify material labor law, depends on the approaches of national legal systems, which in turn, affect the scope of the conflict of laws rules. For example, if they have priority over conflicting regulations of federal law to which they refer (like, say, in Germany), it narrows the scope of the IPL rules.,

Great attention is paid in the Constitution to the definition of the objectives and goals of the foreign policy of the Chinese state and the mechanisms for its implementation, identification id given to the five such principles, including the principle of mutual benefit.

The constitutional amendments in China introduced into the Constitution the concept of human rights: “the State respects and protects human rights.” Whereas during the previous period since the founding of the PRC, the idea of “human rights” was considered in China a taboo subject in ideological and theoretical terms.

Automatic incorporation: Article of the Administrative Procedure Law, (1991) states that "if a provision of an international treaty- which China has concluded or acceded to is different from that of the present law, the treaty provision shall apply unless China has made reservation to the provision.” A more important is Article of General Principles of Civil Law 1986, providing that

If any international treaty concluded or acceded to by China contains provisions differing from those in 'civil laws' of China, the treaty provisions shall apply unless China has announced reservations. If Chinese legislation and any international treaty concluded or acceded to by China do not contain any specific provisions, international customs may apply. (Kodderitzsch: 1991, p. 105; Cooney et al.: 2007, p. 786; Boockmann: 2001, pp. 281-309).

China Employment Promotion Law, Labor Law, other laws that target a certain cluster of people, such as the LPWRI (Law on the Protection of Women's Rights and Interests), and the Law on the Protection of Disabled Persons, contain provisions that ensure basic principles of employment equality and protect people. Thus, clearly, labor rights of equal employment are stipulated. Discriminations based on carrying infectious pathogen are ignored as according to article of Employment Promotion Law:

…no suspected carrier of any infectious pathogen the likely existence of which has been proven by a medical examination shall be permitted to enter into any type of employment prone to facilitate the spread of infectious diseases and therefore forbidden by any law, administrative regulations or the Public Health Administrative Department of the State Council before he/she is cured or eliminates the suspicion that he/she carries the infectious pathogen in question. LPWRI (Law on the Protection of Women's Rights and Interests)

According to experts, for example, Human Papillomavirus (HBV) is rampant in reality in China. The same situation is with registered permanent residence.

However, first, Interna¬tional Convention on Civil Rights and Political Rights of 1966 that speaks in its arti¬cle eight about forced labor issue has been ratified by China in Oct 1998.

Second, in December 2001, China joined WTO in due form, and since it is China's obli¬gation to obey WTO agreements, including the provisions on common exceptions in General Agreement on Tariffs and Trades where one of core labor standards prescribed straightforwardly is about forced labor. As it was mentioned above, China has begun its reform on this issue and has made progress (Bazzano: 1996, p.200).

As for South Africa, the Constitution of South Africa, Act 108 of 1996, adopted on 10 May 1996 (into effect from 4 February 1997) is the supreme law of the land, binding on all organs of State at all levels of government. According to the Constitution in force, the Republic of South Africa is … founded on the value of supremacy of the constitution and the rule of law.

As for the supremacy of the Constitution, it is said in the article that "This Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled."

The previous Constitution of 1994 provided in this regard that it "…shall be the supreme law of the Republic and any law or act inconsistently with its provisions shall unless otherwise provided expressly or by necessary implication in this Constitution, be of no force and effect to the extent of the inconsistency." "This Constitution shall bind all legislative, executive, and judicial organs of state at all levels of government."

Dornbusch, Fischer, and Shmalenzi regarded human capital not only within the framework of physical and labour development but also as a stock of spiritual (including cultural, psychological, and moral) attributes and world-view (Dornbusch et al., 2002). They assigned a special role for human personality in the context of the social environment, for managerial decision-making ability, for the ability to undertake the responsibility, for self-organization skill, and for personal identity. This concept is often used when settling issues associated with the formation of a successful modern manager within the organization.

In the 20th century, the specialists concluded that it is necessary to evaluate the efficiency of human capital in terms of quantity. In particular, they developed economic, mathematical, and statistical models to address issues, such as human value, and educational factors influencing economic development.

With regard to the place of international treaties in the legal system of the South Africa Constitution of 1994 contained the following provisions:

In interpreting the provisions of this Chapter (Chapter 3 of the Constitution "Fundamental Rights" (ss. 7-35: Equality, Life, Human dignity, freedom and security of the person, Servitude and forced labour, Religion, belief and opinion, Property, etc. – author)) a court of law shall promote the values which underlie an open and democratic society based on freedom and equality and shall, where applicable, have regard to public international law applicable to the protection of the rights entrenched in this Chapter, and may have regard to comparable foreign case law.

This approach is partly similar to Indian one based on emphasizing the aspect of "respect for international law and obligations of contracts in the relations between organized Nations."

As for other aspects of labor relations in the Constitution, it was provided in article 27, for instance, that "(1) Every person shall have the right to fair labor practices. (2) Workers shall have the right to form and join trade unions, and employers shall have the right to form and join employers' organizations. (3) Workers and employers shall have the right to organize and bargain collectively. (4) Workers shall have the right to strike for the purpose of collective bargaining. (5) Employers' recourse to the lock-out for the purpose of collective bargaining shall not be impaired, subject to section 33 (1)."

1996 Constitution contains a Bill of Rights (Chapter 2 which enshrines the rights of all South Africans), where it is said that Equality, Human dignity, Life, Freedom, and security of the person, Servitude, and forced labor, etc. are considered to be non-derogable rights.

The Government submitted for its part that the domestic law gives full effect to relevant ILO Conventions and that all judicial recourses have been utilized and exhausted. The Government argued that there is no reason for concern about the inadequacy of the legislative provisions or the legal process; there is accordingly no basis for the Committee [on Freedom of Association] to intervene, either in connection with this dispute or with the domestic laws and judicial process that are in place. In light of the circumstances, the Committee invited the Governing Body to decide that this case does not call for further examination.

In this context it is worth mentioning that at the International Labour Conference of 2012, employees and their representatives and delegates made a statement to the effect that ILO controlling bodies, namely the Committee on Freedom of Association (CFA) and the Committee of Experts on Application of the Conventions and Recommendations (CKACR) have no mandate to claim that the right to strike is included in the freedom of association as long as there are no such direct provisions in the corresponding fundamental ILO Conventions (No 87 and 98). This statement was made contrary to the customary practice that had been accepted by all ILO constituents for decades.

As for Russia, the Russian Federation was a member of the ILO from 1934 to 1940. In 1954 its membership was renewed. Russia has ratified numerous international treaties related to the issue of labor rights: the 1966 UN Covenants on Human Rights and other UN treaties concerning labor tights, a significant number of ILO Conventions. There are differences between international labor standards and the Russian labor law system that cover some issues of labor law.

To name just a few, experts note that with regard to the freedom of association and collective bargaining gaps between the regulations governing the freedom of association and collective bargaining in Russia and the international labor standards mainly concern the following issues:

- A lack of regulations preventing the creation of employ controlled unions;
- Virtually no statutory rules governing internal trade union democracy;
- The pro-majority union type of collective bargaining, which leaves minority unions without any real possibility of independently taking part in collective bargaining.
- Weak consultation and information rights. There are provisions in the Labour Code stating that employers must take into account the plant-level union opinion before implementing company-level acts and in some cases, before dismissal, whereas in fact, the obligation is limited to the exchange of information and hearing the opinion of workers' representatives. Employers are then absolutely free to take any proposed action they wish.
- Serious restrictions on the right to strike.

As for prohibition of discrimination despite having introduced an article on the prohibition of discrimination in the Labour Code Russia, unlike the majority of labour law proceedings, which are won by employees, the applicant very rarely wins discrimination cases. The main reason for this is that there is no kind of alleviation of the burden of proof in discrimination cases. Recommendations of the Chairperson consisted in that the ILO could explore the following:

(a) The strengthening of labor administration and, in particular, labor inspection to further develop its role and its efficiency in the light of ILO principles and standards. The ILO, in the context of the ACI on strengthening workplace compliance through labor inspection, could pilot selected national programs where labor inspection could improve cooperation with the social partners in examining compliance initiatives with a focus on an appropriate mix of measures and instruments such as awareness-raising, prevention, and partnership with other interested stakeholders;

(b) The undertaking of practical actions, focused research and studies on labor administration and its relation with PCIs should be encouraged with a view to collecting and disseminating sound practices; and

(c) The establishment of a forum in the framework of the ACI on strengthening workplace compliance through labour inspection for continuing an open dialogue between labour administrations, workers and employers and their organizations.

CONCLUSION

We have already established a number of substantive features of IPL in labor relations. Among them, to name a few, our predispositions set below:

Unavoidably face with some opposite ideas on territoriality or extra-territoriality of national laws (Bazzano: 1996, p.200). The acceptability of the application of national treatment for foreigners legally justified based on the idea of equality of rights of citizens of a certain state and foreign citizens on its area ((Danthine & Donaldson: 2002: pp. 41-64).

As for the tendency to establish multilateral conflict-of-law provisions at the regional level, this idea in practical terms is leveled. In this regard the solution of application of conflict-of-law regulation in labor relations involving foreigners is the most acceptable on the way of use of in favored principle, corresponding to the legal nature of labor rights, which should be practically applicable in such a way that the parties` choice of law applicable to the employment contract, shall not lead to deterioration of working conditions of the employee compared with the mandatory provisions of the law, which would have been applicable in the absence of such a choice, and this choice should be made by the employee deliberately in writing and at least at the conclusion of their labor contract. (Thirkell et al.: 2011; Baladacchino: 2013; Rodríguez-Soria et al.: 2014, pp. 78-90). Thus, monitoring further changes in this subject area will be our challenge for the future.

BIBLIOGRAPHY

BALADACCHINO, G (2013). Global tourism and informal labor relations: The small scale syndrome at work, Routledge.

BAZZANO, MC (1996). “Child Labor: What the United States and Its Corporations Can Do to Eliminate Its Use”, *Hamline J. Pub. L. & Pol'y*, *18*, p.200.

BOOCKMANN, B (2001). “The ratification of ILO conventions: a hazard rate analysis”, *Economics & Politics*, *13*(3), pp.281-309.

BORNMANN, L, WAGNER, C & LEYDESDORFF, L (2015). “BRICS countries and scientific excellence: A bibliometric analysis of most frequently cited papers”, *Journal of the Association for Information Science and Technology*, *66*(7), pp.1507-1513.

COONEY, S, BIDDULPH, S, KUNGANG, L & ZHU, Y (2007). China's new labor contract law: responding to the growing complexity of labour relations in the PRC, *UNSWLJ*, *30*, p.786.

DANTHINE, JP & DONALDSON, JB (2002). "Labour relations and asset returns", *The Review of Economic Studies*, *69*(1), pp.41-64.

KODDERITZSCH, L (1991). "Japan's New Administrative Procedure Law: Reasons for its Enactment and Likely Implications", *Law Japan*, *24*, p.105.

RODRÍGUEZ-SORIA, B, DOMÍNGUEZ-HERNÁNDEZ, J, PÉREZ-BELLA, JM & DEL COZ-DÍAZ, JJ (2014). "Review of international regulations governing the thermal insulation requirements of residential buildings and the harmonization of envelope energy loss" *Renewable and Sustainable Energy Reviews*, *34*, pp.78-90.

THIRKELL, J, PETKOV, K & VICKERSTAFF, S (2011). The transformation of labour relations: restructuring and privatization in Eastern Europe and Russia, Oxford University Press.

TURNER, HA, CLACK, G & ROBERTS, G (2017). Labour relations in the motor industry: A study of industrial unrest and an international comparison, Routledge.

VAN BIEZEN, I & MOLENAAR, F (2012). "The Europeanisation of party politics? Competing regulatory paradigms at the supranational level", *West European Politics*, *35*(3), pp.632-656.

VIJAYAKUMAR, N, SRIDHARAN, P & RAO, KCS (2010). "Determinants of FDI in BRICS Countries: A panel analysis", *International Journal of Business Science & Applied Management (IJBSAM)*, *5*(3), pp.1-13.

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